

Remarks/Arguments

The title and abstract have been amended to more clearly identify the subject matter of the application.

Claims 1-14 remain in the application. The claims have been amended to obviate objections and more clearly define the invention. No new matter has been introduced.

Claims 1 and 2 were allowed; they have been amended in this paper to delete non-elected subject matter.

Claim Objections. Claims 3-10 and 12 were objected to. The objections have been obviated by the claim amendments. More specifically, claims 3-5 have been amended to correct the improper article; claim 5 has been amended to delete the repetition of “nucleic acid”; claims 6-9 have been amended to change in article and add a comma after “5”; claims 10-11 have been amended to start with an article; claim 10 has been amended so that an article is before “seed”; claims 12 has been amended to insert “the group consisting of” after “selected” and replace “or” with “and.”

Claim Rejections – 35 USC 112.

Claims 13 and 14 were rejected as failing to comply with the written description requirement. In response, the claims have been amended to identify the sequences by SEQ ID NO., so it is now clear that the recited sequences are described.

Claims 3-11 were rejected as failing to comply with the enablement requirement. The Examiner’s point is understood to be that it isn’t reasonable to expect that all plants expressing TcDB2 will be insect resistant. Applicants submit however that those skilled in the art would appreciate that even those plants expressing only TcDB2 are useful, because they can be crossed with other plants expressing Toxin A and a TccC2 to provide the enhanced oral activity of Toxin A disclosed in the application. Accordingly, those skilled in the art would be enabled to use the invention claimed in claims 3-11.

Claims 12-14 were rejected as indefinite and as omitting an essential element, because they do not recite a promoter operably linked with the DNA. The claims have been amended to obviate this rejection. Support for the recitation of promoters is found, of example, in paragraph 26 of the specification.

Claim Rejections – 35 USC 102

Claims 3-11 were rejected as anticipated by US 6,281,413, because “a” protein of SEQ ID NO:10 was interpreted as including any portion of SEQ ID NO:10. In response, “a” has been amended to read “the”.

The amendments are believed to place all of the claims in condition for allowance.
Reconsideration is respectfully requested in light of the amendments and remarks.

Respectfully submitted,

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